

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FARRELL CROSS,)	
)	
Petitioner,)	
)	
v.)	No. 4:18-cv-1135-PLC
)	
EILEEN RAMEY,)	
)	
Respondent.)	

MEMORANDUM AND ORDER FOR PETITIONER TO SHOW CAUSE

This matter is before the Court upon the petition of Farrell Cross for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and his motion for leave to proceed *in forma pauperis*. The Court grants petitioner leave to proceed *in forma pauperis*, and directs him to show cause why this action should not be dismissed due to his failure to exhaust available state remedies.

Petitioner is an inmate at the Jefferson City Correctional Center. On May 22, 2014, a jury convicted petitioner of murder in the first degree. *State of Missouri v. Cross*, No. 12SF-CR00126 (24th Jud. Cir. Jan. 26, 2012). On September 5, 2014, he was sentenced to life imprisonment without parole. Petitioner appealed, and on May 3, 2016, the Missouri Court of Appeals affirmed his conviction and sentence, issuing its mandate on September 22, 2016. *State of Missouri v. Cross*, 497 S.W.3d 271 (E.D. Mo. 2016). On December 20, 2016, petitioner filed a *pro se* motion for post-conviction relief pursuant to Missouri Supreme Court Rule 29.15, and on May 2, 2017, counsel filed an amended motion, asserting numerous claims of ineffective assistance of trial counsel. *Cross v. State of Missouri*, No. 16SF-CC00232 (24th Jud. Cir. Dec. 20, 2016). On October 25, 2017, a hearing was held before the Honorable Sandra Martinez, and evidence was heard. Following the hearing, the record was left open for the submission of

depositions and additional exhibits. On January 12, 2018, Judge Martinez took the matter under advisement, and on April 6, 2018, she entered an order denying petitioner's motion. On May 16, 2018, petitioner filed a notice of appeal. As of the date of this order, that appeal remains pending in the Missouri Court of Appeals for the Eastern District of Missouri. *Cross v. State of Missouri*, No. ED 106716 (Mo. Ct. App. May 17, 2018). In the instant petition, petitioner asserts, *inter alia*, that his trial counsel was ineffective.

In the absence of exceptional circumstances, a state prisoner must exhaust currently available and adequate state remedies before invoking federal habeas corpus jurisdiction. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973). State remedies are ordinarily not considered exhausted if an individual may effectively present his claim to the state courts by any currently available and adequate procedure. In this case, petitioner's post-conviction appellate proceedings remain pending, and he therefore has available state procedures he must exhaust before invoking federal habeas jurisdiction. In light of this, the Court will require petitioner to show cause, in writing and within thirty days of the date of this order, why this case should not be dismissed due to petitioner's failure to exhaust his state court remedies before filing the instant petition in this Court.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that petitioner shall show cause, in writing and no later than thirty (30) days from the date of this order, why the Court should not dismiss the instant petition due to petitioner's failure to exhaust available state remedies.

Petitioner's failure to timely respond to this order shall result in the dismissal of this case, without prejudice and without further notice.

A handwritten signature in blue ink, reading "Patricia L. Cohen", is positioned above a horizontal line.

PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 17th day of July, 2018